

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
NORTHWEST RUBBER COMPOUNDERS,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 80-57

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal for the issuance of a \$50 civil penalty for the alleged violation relating to Southwest Air Pollution Control Authority (SWAPCA) Regulation I, having come on regularly for formal hearing on September 24, 1980, at Centralia, Washington. Present were Board members Nat W. Washington (presiding), and David Akana.

Appellant was represented by its plant manager, G. A. Simmons; respondent was represented by its attorney, James D. Ladley.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Respondent, pursuant to RCW 43.21B.260 has filed with the Board a
4 certified copy of its General Regulations for Air Pollution Sources.

5 II

6 On February 9, 1980, respondent's field enforcement officer was
7 attracted to the specific area of appellant's plant by gray smoke
8 which the enforcement officer estimated to be of an opacity of about
9 40%. Investigation disclosed that the fire was on property of the
10 appellant. The fire was contained in an open concrete-walled
11 enclosure. The remains of a fire covered an area of about 10 feet by
12 10 feet and a fire was still smoldering in an area of about 3 feet by
13 5 feet. The enforcement officer saw that the fire, among other
14 things, had contained rubber and plastic material, which are
15 prohibited materials under RCW 70.94.775 and respondent's regulation
16 400-035(2)(v). The enforcement officer served a field notice of
17 violation of Section 400-035¹ on the manager of the appellants
18 company's plant.

19
20 1. The following are pertinent parts of Section 400-035

21 No person shall ignite, cause to be ignited, permit to be ignited,
22 or suffer, allow or maintain any open fire within the jurisdiction
of the Authority, except as provided in this Regulation.

23 (1) Fires set only for recreational purposes or cooking of food
24 for human consumption are excepted from provisions of this
regulation provided no nuisance is created.

25 (2) Open burning may be done under permit:

III

There was no direct testimony from the employee of the appellant company who actually set the fire but the plant manager testified and frankly admitted that the fire in question had in fact been set by the company in the 10' by 12' feet concrete walled area which had been specially built to burn wood. There was no positive testimony that the fire did not contain rubber and plastic but the manager did state that after the enforcement officer left he inspected the remains of the fire, which at that time was barely smoking, and did not notice any evidence of rubber. He very candidly admitted however that he did not dig down into the remains of the fire to see if any evidence of rubber was present. He testified that it was not the company's practice to burn rubber or plastic compounds, that if any rubber was

1. Cont.

- (a) Burning permits may be provided by the local fire department, fire district or Washington State Department of Natural Resources.
- (b) No permit shall be issued unless the Control Officer is satisfied that:
 - (i) No practical alternate method is available for the disposal of the material to be burned. (The Authority has a written Open Outdoor Fire Policy describing times, areas and kinds of permitted open fires)
 - . . .
 - (v) No material containing asphalt, petroleum products, paints, rubber products, plastic or any substance which normally emits dense smoke or obnoxious odors will be burned.

1 in the area for burning it got there accidentally, and that if there
2 was any rubber or plastic in the fire "it was not with knowledge or
3 authority." When asked directly if there was anything besides wood in
4 the fire his answer was, "not to my knowledge." This answer did not
5 constitute a denial of the presence of other material in the fire.

6 The chief defense offered by the manager was that he sincerely
7 believed the company had received valid permission from the Department
8 of Natural Resources. His testimony was that the permission was oral
9 and had been received "quite some time ago." He further testified
10 that the company had no written burning permit from anyone.

11 The manager was cooperative and extinguished the fire after being
12 requested to do so.

13 IV

14 In view of the inspector's positive and definite testimony that he
15 saw rubber and plastic material in the fire, as distinguished from the
16 much less positive testimony of the plant manager, we find that the
17 fire did in fact contain rubber and plastic, as well as wood.

18 V

19 We find that on February 29, 1980, an employee of the appellant
20 who was not identified at the hearing knowingly caused an open fire;
21 that in addition to wood the fire contained rubber and plastic; and
22 that no permit for the fire had been secured from (SWAPCA) or any
23 other authorized agency.

24 VI

25 Any Conclusion of Law which should be deemed a Finding of Fact is
26 hereby adopted as such.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 From these Findings the Board comes to these

2 CONCLUSIONS OF LAW

3 I

4 The action of the employee in setting the fire was the action of
5 the appellant company.

6 II

7 The setting of the open fire, containing rubber and plastics, was
8 a violation of section 400-035 of respondent's General Regulations of
9 Air Pollution Sources.

10 III

11 The securing of verbal permission from the Department of Natural
12 Resources did not constitute the securing a permit within the meaning
13 of section 400-035.

14 IV

15 Any Finding of Fact which should be deemed a Conclusion of Law is
16 hereby adopted as such.

17 From these Conclusions the Board enters this
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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

ORDER

The \$50 civil penalty is affirmed.

DONE this 6th day of January, 1981.

POLLUTION CONTROL HEARINGS BOARD

Nat. W. Washington
NAT. W. WASHINGTON, Chairman

David Akana
DAVID AKANA, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER